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OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

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July 31, 2017

CERTIFIED MAIL

Wren Stenger, Director
Region 6 - Multimedia Division
U.S. Environmental Protection Agency
1445 Ross Ave, Suite 1200
Dallas, TX 75202

Re: State of Oklahoma's Coal Combustion Residuals Permit Program Application Packet

Dear Director Stenger:

The Oklahoma Department of Environmental Quality (ODEQ) is hereby submitting the enclosed Coal Combustion Residuals Permit Program Application Packet for U.S. Environmental Protection Agency review and approval. The packet contains the following:

- Narrative description of the permit program
- Legal certification
- Copies of all applicable state statutes and regulations
- Part 257(D) checklist with corresponding ODEQ rules

If you have any questions concerning this application or need additional information, please contact Patrick Riley at (405) 702-5191.

Sincerely,

Scott A. Thompson
Executive Director

Enclosure: As stated





SCOTT A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

MARY FALLIN
Governor

STATE OF OKLAHOMA

COAL COMBUSTION RESIDUALS PERMIT PROGRAM

APPLICATION PACKET

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND PROTECTION DIVISION

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NARRATIVE

INTRODUCTION

Pursuant to Section 4005(d)(1) of the Solid Waste Disposal Act (42 U.S.C. § 6945(d)(1)), the State of Oklahoma, through the Oklahoma Department of Environmental Quality ("Department"), submits this application seeking approval from the United States Environmental Protection Agency ("EPA") of the Department's coal combustion residuals ("CCR") permit program. The Department's CCR permit program will implement the underlying requirements found in United States Code of Federal Regulations ("CFR") Title 40, Part 257, Subpart D *Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments*.

On September 16, 2016, the Department, by and through the Environmental Quality Board ("Board"), promulgated in the Oklahoma Administrative Code ("OAC") Title 252 Chapter 517 *Disposal of Coal Combustion Residuals from Electric Utilities*, which prescribes requirements pertaining to the disposal of coal combustion residuals generated from the combustion of coal at electric utilities and independent power producers. Chapter 517 includes the 40 CFR Part 257, Subpart D requirements in their entirety and inserts, where appropriate, pertinent language to enable the Department to permit CCR units and enforce the new Chapter.

As set out below, this application addresses and includes: (1) the Department's jurisdictional responsibilities and duties, specifically as they pertain to the management of solid waste; (2) the Department's permitting rules that apply to CCR units; and (3) three appendices containing OAC 252:517 as well as other applicable statutes and regulations, a CFR Part 257(D) checklist, and a legal certification, respectively.

JURISDICTION AND RESPONSIBILITIES

The Department is granted authority over solid waste, including the regulation of activities and entities engaging in solid waste processing and disposal.¹ This authority includes entities which dispose of fly ash, bottom ash, or any other such material generated by the burning of coal for the purpose of generating electricity by electric utilities and independent power producers in any non-coal mining operation.²

¹ 27A Okla. Stat. ("O.S.") § 1-3-101(B)(9).

² 45 O.S. § 940(A).

Within its jurisdictional areas of responsibility, the Department has the power and duty to enforce any rules promulgated under the Environmental Quality Code (“Code”) Title 27A Okla. Stat. (“O.S.”) § 2-1-101 *et seq.*, and any permits issued pursuant thereto.³ The Department may also exercise incidental powers which are necessary and proper to implement and administer the purposes of the Code.⁴

27A O.S. § 2-10-201 grants the Department, by and through the Board, the power and duty to promulgate rules for CCR disposal.⁵ 27A O.S. § 2-10-202 grants the Department power to: review and act upon applications for CCR unit permits; inspect the construction, operation, closure, and maintenance of units; and perform investigations and inspections deemed necessary to ensure compliance with the provisions of Chapter 517 and any permits issued pursuant thereto.⁶

The Department is also expressly authorized to work with EPA for purposes of implementing a state permitting program subject to federal review and oversight.⁷ In sum, the Department has jurisdiction over CCR disposal and is fully responsible for implementing and enforcing the requirements found in Chapter 517 and all associated permits.^{8,9}

IMPLEMENTING FEDERAL REQUIREMENTS

In order to allow the Department to oversee the federal CCR requirements in the context of a state permitting program, and in order to ensure consistency in solid waste regulation within the State of Oklahoma, the Department promulgated Chapter 517. In doing so, the Department made a few minor, non-substantive changes to the federal rules and also included provisions from OAC 252:515 *Management of Solid Waste* – the Department’s rules applicable to all other solid waste disposal facilities.

When comparing Chapter 517 to Part 257(D), the non-substantive revisions and state-specific inclusions consist of: the removal of statements regarding national applicability; the inclusion of language to require submittal of plans to and approval by the Department; the inclusion of permitting provisions to allow the Department to administer the CCR rules in the context of a permitting program; the inclusion of state-specific location restrictions; the inclusion of procedures for subsurface

³ 27A O.S. § 2-3-202(A)(10).

⁴ *Id.* at § 2-3-202(A)(19).

⁵ *Id.* at § 2-10-201(A).

⁶ *Id.* at § 2-10-202(A)(4),(5).

⁷ *Id.* at § 2-14-202(B)(5); *id.* at § 2-3-101(B)(2) (designating ODEQ as agency to cooperate with federal government for solid waste regulation and other programs authorized by law).

⁸ *See id.* at § 1-1-202(A)(1).

⁹ Due to EPA regulating CCR as a solid waste, many of the same authorities and procedures the Department relied upon to receive Solid Waste Management Plan (“SWMP”) approval are referenced herein.

investigation; and the inclusion of provisions addressing cost estimates and financial assurance.¹⁰

The additional non-federal provisions described above were taken from OAC 252:515 and were included to ensure consistency in state solid waste regulation and to satisfy state statutory requirements. Relatedly, prior to the creation of Chapter 517, all CCR landfills within the Department's jurisdiction were subject to and permitted under Chapter 515.¹¹

PERMITTING REQUIREMENTS

In General

In addition to the permitting provisions in Chapter 517, Subchapter 3, permit applications for new and existing CCR units are subject to the Oklahoma Uniform Environmental Permitting Act ("UEPA") and the Department's permitting rules found in Subchapter 7 of OAC 252:4 *Rules of Practice and Procedure* that were promulgated to implement the UEPA.¹²

The Oklahoma Legislature enacted the UEPA to provide uniform permitting provisions regarding notices and public participation opportunities that apply consistently to applications for permits issued by the Department.¹³ The UEPA establishes three distinct categories or "tiers" of applications, each with varying opportunities for public participation¹⁴, and every permit application submitted to the Department falls within one of these three categories.

The three categories applicable to solid waste management permit applications are found in OAC 252:4-7-58 through 60. Because CCR is regulated as a solid waste, the categorizations detailed in §§ 58 through 60 apply to new and existing permits for CCR units.

Compliance

The Department has the power and duty to evaluate permit applications for administrative and technical completeness and may also request changes, revisions, corrections, or supplemental submissions to ensure consistency with the Code and all rules promulgated thereunder.¹⁵ The Department may also evaluate notices

¹⁰ See OAC 252:517-1, 3, 5, 7, 17.

¹¹ CCR placed in an active or abandoned coal mine is outside Department jurisdiction and also outside the scope of 40 CFR Part 257(D).

¹² 27A O.S. § 2-14-104; see OAC 252:517-3-3(a); see also OAC 252:4-7-1 *et seq.*; see also 27A O.S. § 2-10-501.

¹³ 27A O.S. § 2-14-102.

¹⁴ See *id.* at § 2-14-103.

¹⁵ *Id.* at § 2-14-202(B)(1).

related to applications for sufficiency of content and compliance and require that omissions or inaccuracies be cured.¹⁶

As previously noted, Chapter 517 adopts the Part 257(D) requirements in their entirety; therefore any applicable CCR unit requirements, including but not limited to: (1) location restrictions; (2) operating criteria; (3) design criteria; (4) groundwater monitoring and corrective action requirements; (5) closure and post-closure care; and (6) recordkeeping, notification and posting of information are included in corresponding subchapters in Chapter 517. Accordingly, for an owner or operator of a CCR unit to obtain a permit, or to upgrade a permit for an existing unit, their applications must demonstrate compliance with the requisite Chapter 517 requirements.¹⁷

Specific permit application requirements for new and existing CCR units are referenced in OAC 252:517-1-7 and Subchapter 3.

Public Participation

The three categories of permit applications established in the UEPA have varying opportunities for public participation. Applications are categorized based in part on the significance of the potential impact of the type of activity on the environment, the degree of public concern traditionally connected with the activity, and the amount and type of wastes to be disposed.¹⁸ OAC 252:4-7-58 through 60 place new and existing CCR unit permit applications for both landfills and surface impoundments into one of the three categories, as further described below.

The first category – Tier I – is statutorily defined as a basic process of permitting which includes an application, notice to the landowner, and Departmental review.¹⁹ The permit is either issued or denied by a technical supervisor for the reviewing Division.²⁰ Of the three tiers, Tier I provides the least opportunity for public participation. As set out in OAC 252:4-7-58, only CCR unit applications for minor modifications, lateral expansions within the permit boundary below a certain capacity, and approval of technical plans fall within the Tier I category.

The second category – Tier II – includes the Tier I process and the following: (1) published notice of application filing as legal notice in one newspaper local to the proposed new site or existing facility; (2) preparation of a draft permit or draft denial; (3) published legal notice of the draft permit or draft denial²¹; and (4)

¹⁶ *Id.* at § 2-14-202(B)(2).

¹⁷ *See* OAC 252:517-1-7 for requirement that all CCR units be permitted in accordance with Chapter 517, including units with existing permits issued under another Chapter.

¹⁸ *See* 27A O.S. § 2-14-201(B).

¹⁹ *Id.* at § 2-14-103(9).

²⁰ *Id.*

²¹ *See id.* at § 2-14-302(A)(2).

opportunity for a formal public meeting and public comment.²² After consideration of the public comments and discussion at the public meeting, if held, the permit is either issued or denied by the director of the reviewing division or the Department chief engineer.²³

OAC 252:4-7-59 provides that new permits for on-site CCR disposal units require Tier II applications.²⁴ Additionally, any modifications to on-site facilities not covered under Tier I receive Tier II treatment, and modifications to off-site facilities for certain capacity increases within the permit boundary require Tier II applications.²⁵

The third category – Tier III – includes the Tier II process, plus: (1) the addition of an opportunity for a process meeting included with the notice of application filing²⁶; (2) preparation of a proposed permit, with published notice of availability of proposed permit and response to comments; and (3) an opportunity to request an administrative permit hearing.²⁷ Only the Executive Director of the Department can issue or deny a Tier III permit.²⁸ Additionally, the Department is required to publish notice of the final permit decision and availability of the response to comments for all Tier III applications.²⁹

OAC 252:4-7-60 provides that new permits for off-site CCR disposal units and certain, significant modifications to off-site CCR disposal units require Tier III treatment.³⁰

All permitting documents, including applications and permits for Tier I-III permits, are public records³¹ and available for review and copying at the Department's Central Records section. The Department also makes available Tier II applications and draft permits and Tier III applications, draft permits, and proposed permits on the Department's website.

²² *Id.* at § 2-14-103(10); *see id.* at § 2-14-303.

²³ *Id.* at § 2-14-304(B); *Id.* at § 2-14-103(10).

²⁴ *See* OAC 252:4-1-2 for the definitions of "on-site" and "off-site" solid waste disposal facilities.

²⁵ OAC 252:4-7-59.

²⁶ *See* 27A O.S. § 2-14-301(B); *see also* 27A O.S. § 2-14-103(5) (defining process meeting as "a meeting open to the public which is held by the Department to explain the permitting process and the public participation opportunities applicable to a specific Tier III application").

²⁷ *Id.* at § 2-14-103(11); *see id.* at §§ 2-14-304 and 2-10-303.1.

²⁸ *Id.* at § 2-14-103(11).

²⁹ *Id.* at § 2-14-304(F).

³⁰ OAC 252:4-7-60.

³¹ *See* 51 O.S. §§ 24A.1-24A.30.

COMPLIANCE MONITORING AUTHORITY

The Department is required to be fully responsible for implementing and enforcing the laws and rules within its jurisdiction, including Chapter 517.³² Accordingly, the Department has the power and duty to perform investigations and inspections of CCR units to ensure compliance with Chapter 517 and all permits issued pursuant thereto.³³ Any authorized representative of the Department may enter at reasonable times upon any private or public property to inspect, including but not limited to the review of records and collection of samples.³⁴ If the owner or operator does not allow access, the Department may apply to and obtain from a judge of the district court an order authorizing an administrative warrant to enforce access to premises for sampling, investigation, inquiry, and inspection.³⁵ All Chapter 517 recordkeeping and reporting requirements, including any required sampling and monitoring, are statutorily authorized and required to be provided to the Department upon request, unless otherwise required to be regularly submitted.³⁶

A complaints program is in place to further assist the Department with compliance monitoring. This program allows for the proper consideration of information submitted by the public and requires intake processing, investigation, and the expedient resolution of complaints received by the Department.³⁷

ENFORCEMENT AUTHORITY

If upon inspection or investigation, or whenever the Department determines there are reasonable grounds to believe that a CCR disposal unit is in violation of any applicable requirements, the Department may give written notice to the owner or operator of the unit of the specific violation and of their duty to correct it, and that the failure to do so will result in the issuance of a compliance order.³⁸

If the owner or operator fails to come into compliance or fails to agree to a schedule to come into compliance, the Department may issue a compliance order, which becomes final within fifteen days unless an administrative enforcement hearing is requested.³⁹ The compliance order may assess administrative penalties for each day the responsible party fails to comply.⁴⁰ Failure to comply with a final compliance order may result in the issuance of an assessment order assessing an

³² 27A O.S. § 1-1-202(A)(1).

³³ *Id.* at § 2-10-202(A)(5).

³⁴ *Id.* at § 2-3-202(A)(1), (4); *id.* at § 2-3-501(A).

³⁵ *Id.* at § 2-3-202(A)(1); *id.* at § 2-3-501(D).

³⁶ *Id.* at § 2-3-202(A)(8); *id.* at § 2-3-501(C).

³⁷ *See id.* at § 2-3-101(F)(1); *see also id.* at § 2-3-202(A)(3).

³⁸ *Id.* at § 2-3-502(A).

³⁹ *Id.* at § 2-3-502(B).

⁴⁰ *Id.*

administrative penalty as authorized by law, or a supplementary order imposing additional requirements, or both.⁴¹

The Department may also issue an administrative order without notice or hearing when an emergency exists in order to take immediate action to protect public health and welfare or the environment. Any person to whom the order is directed must comply immediately, but the responsible party may request an administrative enforcement hearing within fifteen days after the order is served.⁴²

The Department may also seek injunctive relief to prevent a violation of or compel compliance with Chapter 517 and any permit issued pursuant thereto.⁴³ If any actions or omissions present an imminent and substantial endangerment to human health or the environment, the Department may obtain a temporary order for immediate relief during the pendency of the action or until the threat no longer exists.⁴⁴

State statute also authorizes the Department to seek administrative and civil penalties in district court for violations of the Code, rules, and any permits and orders issued thereunder.⁴⁵

INTERVENTION IN CIVIL ENFORCEMENT PROCEEDINGS

The Department has no statutory or regulatory process for public notice in the event that a civil enforcement action is settled in district court. However, the Department will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Lastly, the complaints program referenced above allows for meaningful public involvement and provides for mediation in the event a complainant is unsatisfied with the Department's resolution of a complaint.⁴⁶

⁴¹ *Id.* at § 2-3-502(C).

⁴² *Id.* at § 2-3-502(E).

⁴³ *Id.* at § 2-3-504(A)(4), (F)(1)(c); *see also* § 2-3-504(I) (authorizing Department to take civil action in addition to or in lieu of administrative enforcement for any violations of the Code, rules and permits issued thereunder).

⁴⁴ *Id.* at § 2-3-504(F).

⁴⁵ *See id.* at § 2-3-504(A)-(C), (H).

⁴⁶ *Id.* at § 2-3-101(F)(1); *id.* at § 2-3-503; *id.* at § 2-3-104.

